

AGENDA MEMO

CITY COUNCIL MEETING DATE: May 16, 2007

DEPARTMENT: ADMINISTRATIVE

ITEM DESCRIPTION: Amended and Restated Agreement to Design, Construct, and Lease a Performing Arts Center

1. This Amended and Restated Agreement to Design, Construct, and Lease a Performing Arts Center ("Restated Agreement") replaces and supersedes the Original Agreement approved December 27, 2005. The Restated Agreement describes a new project scope which comprises a Large Hall Theater, a Small Hall Theater, a Cabaret Theater with rehearsal space, and complimentary retail and office space to be built in phases.
2. The Developer is the Las Vegas Performing Arts Center Foundation ("Foundation"), a Nevada nonprofit corporation formed for the purpose of designing, developing, and operating the Smith Center for the Performing Arts. The Board of Directors is described in the Disclosure of Principals, attached as Exhibit F to the Restated Agreement. City Parkway V, Inc. and the City of Las Vegas are the contracting parties in the Restated Agreement.
3. The Restated Agreement moves the PAC Campus Site from the center of the 2005 master plan to Parcel H/I in the current Union Park Master Plan. The final metes and bounds legal description will be prepared subsequent to execution of the Restated Agreement to take into account on-street parking to be built around the perimeter of the project site. The final project site is expected to be approximately 4.77 gross acres. A portion of this on-street parking will be reserved for a valet parking program.
4. The Large Hall Theater will be the first phase of construction. It will be built on a portion of the Site, located near the corner of Discovery Avenue and City Parkway in Union Park.
5. The City has agreed to increase its funding contribution for the Large Hall Theater from \$2.2 Million (in the Original Agreement) to \$5,603,000 (in the Restated Agreement). This funding contribution acts as a cost cap or a ceiling and "backstops" the environmental obligations of Union Pacific Railroad as specified in the Grant Sale Deed with Ply Stadium Partners, Inc.
6. The Foundation may proceed with development of a future phase on the PAC Campus Site provided that the construction contract for the Large Hall Theater is ready to be executed, and provided that PAC has achieved financing for the development and operation of the future phase. The City would agree to fund future phase remediation against a mutually agreeable budget to the extent that funds are available from future infrastructure budgets.
7. The Foundation will provide off-site parking for theater patrons on private parcels near Parcel H/I. To the extent permanent parking is not available upon completion of the Large Hall Theater, City Parkway V, Inc. will provide 1,400 spaces of temporary surface parking as shown in Exhibit F to the Lease and Operating Agreement, on Parcels A2, B, and L.

City of Las Vegas

8. The Nevada State Legislature approved a 2% ad valorem car rental tax to support the development of the Project. The City is capitalizing this car rental tax revenue through a General Obligation bond issue, which is projected to generate in excess of \$100 Million for the Large Hall Theater. Because a General Obligation Bond issue requires City ownership, the City will own the land and the Large Hall Theater. Because of City ownership, the City will bid the Large Hall Theater as a public work project at prevailing wage rates. The City will manage the construction agreement with the general contractor through completion of construction.

9. Although the Restated Agreement requires construction to start by April 30, 2009, the Foundation is on schedule to commence construction by the third quarter or fourth quarter of 2008. The Foundation has completed schematic design for the Large Hall Theater.

10. PAC must submit a written notice to City Parkway V, Inc. of its intent and ability to develop a Future Phase ("Future Phase Election Notice") no later than December 31, 2016, which is approximately five years after the projected completion date of the first phase Large Hall Theater.

11. The Lease and Operating Agreement (Exhibit G to the Restated Agreement) governs the lease and operation of the Large Hall Theater. Due to the use of General Obligation Bonds from the City, the Lease and Operating Agreement is for a term of 99 years. The Lease and Operating Agreement functions as a "triple net" lease which passes all of the costs of operating the Large Hall Theater to the Foundation.

12. The development of a Future Phase (Small Theater, Cabaret Theater, retail space, or office space) will be governed by the Form Disposition and Development Agreement (Exhibit H to the Restated Agreement). This Form Disposition and Development Agreement enables the Foundation to purchase a future phase site when the corresponding project is "construction-ready", meaning construction plans are final, and all project financing is available.

13. The funding needed for remediation of a Future Phase is identified in Exhibit I to the Restated Agreement. This chart identifies estimates, in future dollars, of what funding would be needed for a future phase. The final amount to be provided by the City will be determined at the time when the Foundation delivers to the City a Future Phase Election Notice together with an update to these cost estimates, which are derived from a March 8 Risk Assessment prepared by Kleinfelder.

14. The Reynolds Foundation is providing to the Project an endowment of \$50 Million, of which \$45 Million will be reserved for operations of the Smith Center. The Restated Agreement requires this funding to remain committed prior to the commencement of construction of the Large Hall Theater.